

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN FUNCK,

Defendant.

No. 10-CR-4102-DEO

**ORDER ACCEPTING REPORT
AND RECOMMENDATION
CONCERNING GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

Before the Court is Chief Magistrate Judge Paul A. Zoss's Report and Recommendation Concerning Guilty Plea (Docket No. 60).

On November 16, 2010, a five count Indictment (Docket No. 2) was returned in the above-referenced case. On November 14, 2011, Defendant Justin Funck entered a guilty to plea to Count 1 before Chief United States Magistrate Judge Paul A. Zoss

Count 1 of the Indictment charges that in or between April 30, 2009, and May 25, 2009, in the Northern District of Iowa, and elsewhere, defendant Justin Funck, knowingly received an attempted to receive visual depictions of minors engaged in sexually explicit conduct, using a means and facility of interstate and foreign commerce.

This was in violation of Title 18, United States Code, Sections 2252(a)(2) and 2252(b)(1).

The Report and Recommendation (Docket No. 60, 11/14/2011), states that the Defendant is pleading guilty pursuant to a plea agreement (Docket No. 57-1), and Chief United States Magistrate Judge Paul A. Zoss recommends that defendant Justin Funck's guilty plea be accepted. Waivers of objections to Judge Zoss's Report and Recommendation were filed by each party (Docket Nos. 61 and 62). The Court, therefore, undertakes the necessary review to accept defendant Justin Funck's plea in this case.

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

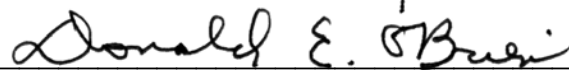
The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

As mentioned, waivers of objections to the Report and Recommendation have been filed, and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.

IT IS THEREFORE HEREBY ORDERED that this Court accepts Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 60), and accepts defendant Justin Funck's plea of guilty in this case to Count 1 Indictment (Docket No. 2).

IT IS SO ORDERED this 10th day of January, 2012.

A handwritten signature in cursive script, reading "Donald E. O'Brien", positioned above a horizontal line.

Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa